



# FOIP FOLIO

## CANADA'S ACCESS AND PRIVACY COMMUNITY LOSES A REMARKABLE LEADER

**John Grace** passed away in February, 2009. John was the first person to serve as Privacy Commissioner of Canada (1983-1990) and then served as only the second Information Commissioner of Canada (1990-1998). A wonderfully literate man, John wrote clear and powerful Annual Reports. John Grace demonstrated that even though he did not have

order making power, he could exert considerable influence on the access and privacy practices of the Government of Canada. Gary Dickson, Saskatchewan's Information and Privacy Commissioner observed that John Grace had been both gracious and generous in sharing advice and experience with him over the last 15 years.

## WE NEED HELP

Help!

Our office is holding an open competition for an eight month term Portfolio Officer position.

The Portfolio Officer position reports to the Director of Compliance and is responsible for the examination and resolution of diverse access to information and privacy issues arising from *The Freedom of Information and Protection of Privacy Act* (FOIP), *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and *The Health Information Protection Act* (HIPA). As a

Portfolio Officer you will: monitor compliance with the Acts; mediate between individuals and public sector organizations and health trustees on access and disclosure issues; and generally uphold the access and privacy rights of Saskatchewan residents. You will also promote public awareness through accessible education programs.

Please visit our website at [www.oipc.sk.ca](http://www.oipc.sk.ca) for a copy of the employment ad and the Position Summary/Responsibilities. The closing date for the competition is March 6, 2009.

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## BOARD OF INTERNAL ECONOMY PROVIDES 12.77% INCREASE IN FUNDING FOR OIPC

The Legislative Assembly's Board of Internal Economy dealt with estimates for the Office of the Information and Privacy Commissioner (OIPC) on Friday, February 13, 2009. We had asked for approval to hire two new Portfolio Officers and a full time administrative assistant. The purpose was to eliminate our backlog of 245 files (investigations for breach of privacy and reviews of access to information denials) and to then meet the performance measures outlined in our Business Plan for 2007-2009. The Board

approved only the hiring of the administrative assistant. The Board did approve additional funds to cover some one-time costs. In the result, we will not be able to eliminate our backlog and will not be able to achieve our Business Plan performance measures as quickly as we had hoped. The Hansard record of our presentation to the Board will soon be available through the Speaker's office.

## ANNOTATED SECTION INDEX FOR HIPA, FOIP AND LA FOIP

One of the key performance measures in our Business Plan 2007-2009 was an annotated section index for the three statutes that we oversee. That work has now been completed and the following Annotated Section Indexes are available at our website, [www.oipc.sk.ca](http://www.oipc.sk.ca) under the *What's New* tab and the *Reports* tab:

- [Annotated Section Index for HIPA](#)
- [Annotated Section Index for FOIP](#)
- [Annotated Section Index for LA FOIP](#)

The above instruments were accurate as of February 5, 2009. Hopefully this will be of

assistance to the public as well as government institutions, local authorities and trustees in their compliance efforts.

We have also completed an annotated section index for our Investigation Report H-2005-002 (Saskatchewan Cancer Agency). This report, nearly 200 pages in length, considered more than 60 different provisions in HIPA. This document should be available on our website in March 2009.

## BROWN BAG WORKSHOPS

We are gratified by the strong response to the brown bag luncheon workshops. These are noon hour sessions in our office at 503-1801 Hamilton Street, Regina that run from 12:00 to 12:45 p.m. There are handouts and resource lists for participants. If you are outside of Regina, you can join by phone hook-up. This program has been designed for FOIP Coordinators, Privacy Officers and others working in trustee or public sector organizations. There has also been considerable interest from members of the public. Our intention is to offer some sessions later in

2009 specifically focused on the needs of anyone interested in making an access request or initiating an appeal to our office from a public body denial of access. Upcoming workshops are:

**March 25, 2009 - *How to Sever Documents*** - 503-1801 Hamilton Street (to register contact Aaron at 798-2264 or [aorban@oipc.sk.ca](mailto:aorban@oipc.sk.ca))

**April 29, 2009 - *Fees and Fee Estimates*** - 503-1801 Hamilton Street (to register contact Larissa at 798-0303 or [lmcwhinney@oipc.sk.ca](mailto:lmcwhinney@oipc.sk.ca))



## CITY OF REGINA PRIVACY BREACH

The OIPC is encouraged by the prompt and transparent response by the City of Regina to a recent data breach that involved personal information of Regina residents, including some SIN numbers that were provided to university researchers in Halifax. The City has followed the *Privacy Breach Guidelines* available on our website, [www.oipc.sk.ca](http://www.oipc.sk.ca) under the *Resources* tab. As is our usual practice, since the City is undertaking an internal investigation and has

started a notification process, our office will not make any decision on whether it is necessary for us to undertake a formal investigation under *The Local Authority Freedom of Information and Protection of Privacy Act* until we have received and reviewed the final report from the City's internal investigation or until a reasonable time has elapsed.

## BC COMMISSIONER FAULTS GOVERNMENT'S FOI PERFORMANCE



Information and Privacy Commissioner **David Loukidelis** has criticized the B.C. provincial government for its failure to tackle the chronic problem of delay in responding to FOIP access requests. He has announced that his report, released February 13, 2009, is the first of what will become annual reports on government's performance in meeting its openness and accountability obligations under the FOIP law. The B.C. government's response is included in the report. The government has agreed to guarantee wherever possible the anonymity of access requesters and abandon the practice by some ministries of assigning

"sensitivity" ratings to requests made by certain kinds of applicants. Commissioner Loukidelis has stated that, "Any difference in timeliness for access requests from political parties, media or interest groups is inconsistent with open government and must stop". You can access the report – *Timeliness of Government's Access to Information Responses*, (February 2009) at [www.oipc.bc.ca](http://www.oipc.bc.ca). In Saskatchewan, the OIPC also takes the position that any differential treatment of access requests by certain groups or occupations is contrary to the purpose of our FOIP and LA FOIP statutes. This is discussed in the *Helpful Tips* tool available at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the *Resources* tab.

## WEAKNESSES IN RULES GOVERNING VOTER INFORMATION COULD THREATEN THE PRIVACY OF CANADIANS

An historic collaboration between the federal Privacy Commissioner and the Auditor General focused on four different federal institutions, including Elections Canada. The resulting audit report to Parliament identified significant shortcomings in safeguarding personal information of citizens. These include:

- Some voter lists simply vanished during elections and by-elections;

- Elections Canada collects too much personal information on voters, including on teenagers too young to vote, and
- Canadians are not fully informed about how their personal information will be used.

The audit report is available at [www.privcom.gc.ca](http://www.privcom.gc.ca).



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## PRIVACY AND ADMINISTRATIVE TRIBUNALS

Commissioner **Gary Dickson** recently presented a paper on privacy and administrative tribunals at a Canadian Bar Association conference. The paper, *Privacy, Administrative Tribunals and the Net*, is available at our website under the *Resources* tab. This includes a number of specific recommendations for Saskatchewan's administrative tribunals, boards, commissions and agencies. On the same topic, British

Columbia Commissioner, **David Loukidelis**, recently presented an excellent paper entitled *Privacy and Openness in Tribunal Proceedings*. This is available at [www.oipc.bc.ca/publications/speeches\\_presentations/CBA-CLE\\_Conference\\_Admin\\_Tribunals\\_Privacy\\_4Nov08\).pdf](http://www.oipc.bc.ca/publications/speeches_presentations/CBA-CLE_Conference_Admin_Tribunals_Privacy_4Nov08).pdf)

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## THE SUPREME COURT OF CANADA & THE OPEN COURTS PRINCIPLE

In February 2009 the Supreme Court issued its *Policy for Access to Supreme Court of Canada Court Records*. This document includes definition of "personal data identifiers" and provides that, "[p]ersonal information, including personal data identifiers, shall not be included in a court record unless it is required for the disposition of the case". The policy recognizes that personal data identifiers and personal information, if combined with the individual's name and made widely accessible to the public, could pose a serious threat to the individual's personal security. There are special rules for

bulk access to court records including a special registration process. There is also a requirement that bulk users will be required to comply with provincial and federal privacy legislation and must not use the personal information for any improper purposes. This document can be accessed at [www.scc-csc.gc.ca/court-cour/rec-doc/pol-eng.asp](http://www.scc-csc.gc.ca/court-cour/rec-doc/pol-eng.asp). If the Supreme Court is changing policy to reflect the risks to privacy, all Saskatchewan administrative tribunals should also be reassessing their Internet publication practices.

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## ONTARIO COURT FINDS PRIVACY BREACH IS ALSO CONSTRUCTIVE DISMISSAL

Justice Little of the Ontario Superior Court of Justice has found that the unwarranted installation of a closed circuit TV in an employee's office constituted constructive dismissal. The employer's position was that "he had a right to put the camera there". The Court proceeded to award damages to the employee. This was done on the basis that her contract of employment had been violated and the workplace poisoned by the actions of the employer. Ontario does not have any applicable privacy legislation. In Saskatchewan there is the little

used *Privacy Act* that allows an aggrieved individual to start an action in the Court of Queen's Bench for an unreasonable invasion of privacy. This area of privacy in the private sector workplace is an area that the Saskatchewan Commissioner has repeatedly suggested needs attention from the Legislative Assembly. The Ontario decision is accessible through the free legal information website, CanLII. The citation for this case is *Colwell v. Cornerstone Properties Inc.*, 2008 CanLII 66139 (ON S.C.).







## CHECK OUT WINNING PRIVACY VIDEOS

The National Youth Privacy Video Competition launched in Regina last June is completed and the winners announced by the Office of the Privacy Commissioner of Canada. You can see the winning entries on the Privacy Commissioner's YouTube channel: [www.youtube.com/](http://www.youtube.com/privacycomm)

[privacycomm](http://www.youtube.com/privacycomm). The video competition is continued in 2009 and is open to youth between 12 and 18 who produce a video public service announcement that explores the importance of privacy.

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## FUTURE EVENTS

**March 9, 2009 - CBA Privacy & Access Law North Section Meeting:** *Electronic Health Records* - Saskatoon SK, Saskatoon Club at 12:00 pm (to register call the CBA at 306-244-3898)

**March 10, 2009 - CBA Privacy & Access Law South Section Meeting:** *Electronic Health Records* - Regina SK, Hotel Saskatchewan at 12:00 pm (to register call the CBA at 306-244-3898)

**March 11-13, 2009 - IAPP Privacy Summit 2009** - Washington, DC (visit [www.privacysummit.org](http://www.privacysummit.org) for more details)

**March 25, 2009 - OIPC Brown Bag Workshop:** *How to Sever Documents* - 503-1801 Hamilton Street (to register contact Aaron at 798-2264 or [aorban@oipc.sk.ca](mailto:aorban@oipc.sk.ca))

**April 4-8, 2009 - HIMSS09 Annual Conference and Exhibition** - Chicago, Illinois (visit <http://www.himssconference.org/docs/HIMSS09MINIbrochure.pdf> for more details)

**April 29, 2009 - OIPC Brown Bag Workshop:** *Fees and Fee Estimates* - 503-1801 Hamilton Street (to register contact Larissa at 798-0303 or [lmcwhinney@oipc.sk.ca](mailto:lmcwhinney@oipc.sk.ca))

**May 31-June 3, 2009 - e-Health 2009: Leadership in Action** - Quebec City, Quebec (visit <http://www.e-healthconference.com/> for more details)

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